



International
Chamber of Shipping
Shaping the Future of Shipping

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H E Mr. Khalid Mahmud Chowdhury
Minister of State
Ministry of Shipping
People's Republic of Bangladesh
Dhaka, Bangladesh

23 August 2023

Dear Minister,

GLOBAL SHIPPING INDUSTRY CONCERNS REGARDING THE BANGLADESH FLAG VESSELS (PROTECTION OF INTEREST) ACT 2019 AND RELATED SHIPPING NOTIFICATION

Introduction

The International Chamber of Shipping (ICS) is the global trade association for shipowners and operators, representing 40 national shipowners' associations and over 80 per cent of world merchant fleet. ICS represents all sectors and trades within the global shipping industry and enjoys consultative status with the UN International Maritime Organisation (IMO).

Background

We are writing to express our concern regarding the implications of the Bangladesh Flag Vessels (Protection of Interest) Act 2019 and the corresponding Ministry of Shipping Notification (S.R.O. No.- 29-Act/2023) published on 5 February 2023, both of which impose cargo preference provisions for the transportation of Bangladesh cargo by Bangladesh flagged vessels.

We understand that our communication is supported by those of other international organisations, such as the World Shipping Council and the Consultative Shipping Group who have also expressed their concern to the Ministry of Shipping in an effort to highlight the implications of the amended legislation.

While it is recognised that the primary purpose of this legislation is to encourage the growth of the Bangladeshi national shipping industry, as a trade restrictive measure the legislation may in fact act to limit competition in Bangladeshi shipping trades, creating market distortion, increasing shipping costs and ultimately harming the Bangladesh economy. We are aware of delays and congestion around Bangladeshi

ports which have already been reported as a direct consequence of the Act and its implementation and the global shipping industry would urge the Government of Bangladesh to facilitate a review of these restrictive provisions, thereby advancing free and fair market access principles.

Global Shipping Industry Concerns

ICS understands that the Bangladesh Flag Vessels (Protection of Interest) Act 2019, mandates that “at least fifty percent of the sea-borne cargoes relating to foreign trade of Bangladesh shall, subject to the other provisions of this Act, be carried by Bangladesh flag vessels” (Article 3). Of concern, the calculation through which compliance with this provision will be assessed is not specified. The division of 50% of sea-borne cargoes might, for example, be calculated by cargo weight, or by cargo value, or may be sub-divided into calculations considering both types of goods and mode of transport, but this remains unclear.

If the industry interpretation of this legislation is correct, the 2019 Act would appear to constitute a form of discriminatory cargo preference, in direct contravention to accepted international practice and maritime free trade principles. There are further concerns that provisions within the Ministry of Shipping Notification (S.R.O. No.- 29-Act/2023) include crewing requirements for foreign flagged vessels, which appear to be in direct contravention to accepted international maritime principles as advanced by the United Nations Convention on the Law of the Sea (UNCLOS), a treaty ratified by Bangladesh in 2001.

ICS has identified a number of potential concerns with the legislation, detailed below, and kindly requests further clarification from the Government of Bangladesh with a view to amending or removing the most concerning provisions of the regulation.

Clarity required on waiver definition

We would respectfully request some additional clarity regarding the distinction between two types of exemptions mentioned in the Act, namely, "certificate of waiver" (Article 3(b)) and "general waiver" (Article 3(c)).

The Bangladesh Ministry of Shipping Notification (S.R.O. No.- 29-Act/2023) has provided some guidance on the process for acquiring a "certificate of waiver," which has shed some light on the exemption procedure. However, the specific provisions and requirements for securing a "general waiver" have not been clearly outlined in the notification. This lack of clarity has left industry stakeholders uncertain about the exact criteria and procedures involved in obtaining a "general waiver" and has raised questions about how this differs from the "certificate of waiver."

This ambiguity surrounding the two types of waivers may lead to inconsistencies in the application and interpretation of the Act, creating potential challenges and operational

delays for foreign shipping companies seeking to engage in trade with Bangladesh. Clear and transparent guidelines for both types of waivers would be beneficial for the international shipping industry, as it would help foster a better understanding of the Act's provisions and promote smoother trade relations with Bangladesh.

Clarity required on exemption approval mechanism

The lack of clarity surrounding the assessment mechanism for compliance with this legislation is also a matter of concern for the global shipping industry. The specific criteria and grounds upon which a "general waiver" or "certificate of waiver" will be granted remain uncertain, leaving stakeholders uncertain about the process. The Bangladesh Ministry of Shipping Notification (S.R.O. No.- 29-Act/2023), Article 4, does provide some insight into the procedure for granting exemption certificates. However, it only mentions that the concerned authority will examine the application and, subject to the opinion of the 'State-owned Shipping Corporation and the Bangladesh Flag Ship Owner's Association,' may grant the exemption certificate within three working days.

We would respectfully contend that the involvement of a body representing private entity interests in a public waiver mechanism not only increases the administrative burden to those parties seeking exemption but may serve to undermine the neutrality of exemption decisions made, potentially reducing market access, and reducing carrier competition to the ultimate detriment of Bangladeshi importers and exporters.

The lack of clear parameters and guidelines used to assess the granting of waivers raises concerns, as such decisions can significantly impact established trade lanes and the maritime value chain. Given the potential implications and costs involved, the global shipping industry urges the relevant authorities to seek clarification and transparency regarding the assessment criteria for granting exemption certificates, thereby promoting fair and efficient trade practices.

Crewing provisions appear to contravene UNCLOS

The requirement imposed by Article 6 of the Ministry of Shipping Notification (S.R.O. No.- 29-Act/2023) that crew members on foreign-flagged vessels transporting commercial goods in coastal areas of Bangladesh must be recruited from among Bangladeshi officers and sailors raises concerns about its compatibility with international legal principles, particularly Article 94 of the United Nations Convention on the Law of the Sea (UNCLOS).

This provision appears to encroach upon the principle of flag state authority enshrined in UNCLOS, which grants each country the exclusive right to determine crewing requirements for the vessels it flags. Consequently, no nation has the legal authority to impose citizenship requirements on seafarers working aboard foreign-flagged vessels, regardless of the geographical area of their operation.

The global shipping industry urges the Government of Bangladesh to reconsider and potentially amend or remove these provisions to ensure alignment with international conventions and that the principles of free and fair facilitation of international maritime trade are upheld.

Conclusion

As an organisation with a long-standing commitment to fostering open competition and free and fair access to maritime markets, ICS remains concerned that the Bangladesh Flag Vessel Act's implementation has introduced several complexities and contradictions that warrant careful re-evaluation. It is our firm belief that constructive dialogue and cooperation between maritime authorities and the global shipping industry can lead to solutions that promote sustainable growth, mutual benefits, and the overall well-being of the international maritime community.

We kindly request your consideration of our concerns and recommendations for the reassessment of these provisions and express our readiness to engage in further discussions to find mutually beneficial resolutions.

Thank you for your attention to this matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Guy Platten', with a horizontal line underneath it.

Guy Platten
Secretary General
International Chamber of Shipping